

Michael K. Jeanes, Clerk of Court  
\*\*\* Electronically Filed \*\*\*  
01/26/2007 8:00 AM

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 1996-014769

01/24/2007

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT  
B. Navarro  
Deputy

STATE OF ARIZONA, et al.

MICHAEL L PARRISH

v.

AMERICAN TOBACCO CO INC, et al.

PAUL F ECKSTEIN

WILLIAM J MALEDON  
REBEKAH W FRANCIS  
SANFORD J GERMAINE  
HOLLY E LOISEAU  
WEIL GOTSHAL & MANGES LLP  
1300 EYE ST NW STE 900  
WASHINGTON DC 20005  
THOMAS J FREDERICK  
WINSTON & STRAWN LLP  
35 W WACKER DR  
CHICAGO IL 60601  
MATTHEW M WAWRZYN  
KIRKLAND & ELLIS LLP  
200 E RANDOLPH DR  
CHICAGO IL 60601  
ELIZABETH B MACCALLUM  
HOWREY LLP  
1299 PENNSYLVANIA AVE NW  
WASHINGTON DC 20004-2402  
PENNY P REID  
WEIL GOTSHAL & MANGES LLP  
767 FIFTH AVE  
NEW YORK NY 10153  
KENNETH L CHERNOF  
HELLER EHRMAN LLP  
1717 RHODE ISLAND AVE NW

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 1996-014769

01/24/2007

WASHINGTON DC 20036-3001

**UNDER ADVISEMENT RULING**

The Court has taken Defendants Philip Morris, Inc.'s, R.J. Reynolds Tobacco Company's and Lorillard Tobacco Company's Application and Motion of the Original Participating Manufacturers to Enforce the Arbitration Provisions of the Master Settlement Agreement and Compel Arbitration. The Court has considered the memoranda of the parties filed in connection with the Original Participating Manufacturers' Motion to Compel Arbitration, as well as the oral arguments of counsel. The parties agree that at least a portion of this dispute, *i.e.*, the Auditor's application of the 2003 NPM Adjustment is subject to arbitration. The parties do not agree that the diligent enforcement provisions should likewise be subject to binding arbitration.

The parties also disagree as to the propriety of this Court's consideration of other rulings of other jurisdictions. The Court notes that, at one time, Arizona thought it appropriate to file an amicus brief in New York with the intention of affecting the outcome. By the same token, the Court is not persuaded that its findings should be swayed by the fact that every other jurisdiction, except North Dakota, has compelled arbitration. The Court must be mindful of the reality that the other jurisdictions are dealing with the identical Master Settlement Agreement.

As to the correct interpretation of the factual background of the Master Settlement Agreement and the subsequent dispute leading up to the Manufacturer's Motion to Compel Arbitration, the Court adopts the findings set forth in *Connecticut v. Philip Morris, Inc.*, \_\_\_\_ A.2d \_\_\_\_, 279 Conn. 785, 788-792, WL2505900 (2006), filed as Exhibit E accompanying the Defendants' motion. This is not done under some theory of *stare decisis*, but with such an excellent recitation of the facts so succinctly stated, there is no reason to reinvent the wheel.

Arizona strongly favors arbitration as a matter of public policy. *Snowberger v. Young*, 24 Ariz. App. 177, 536 P.2d 1069 (1975), *Rocz v. Drexel Burnham Lambert Inc.*, 154 Ariz. 462, 743 P.2d 971 (App. 1987). The enormity of the settlement process, covering the vast number of different jurisdictions expanding beyond the lower forty eight states, likewise suggests arbitration as the appropriate vehicle for dispute resolution.

The terms of Section XI (c) of the Master Settlement Agreement are clear and unambiguous, and the decision to accept the State's presumption of diligent enforcement

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 1996-014769

01/24/2007

necessarily affected Independent Auditor's calculation of the NPM adjustment. That, in turn, necessarily makes the dispute before this Court an issue to be arbitrated. For those reasons,

**IT IS ORDERED** granting the motion in its entirety.

The parties had intimated that appellate review was likely, regardless of the Court's ruling. Accordingly, on the Court's own motion,

**IT IS FURTHER ORDERED** staying this matter from proceeding to arbitration until **February 23, 2007**, in order for the parties to have adequate time to consider and/or prepare for special action review.